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VOL. X. No. 2094.

HONOLULU, TERRITORY OF HAWAII, THURSDAY, MARCH 13 1902.

PRICE 5 CENTS.

If You Don't Get What You Want Advertise For It

EVENING BULLETIN

USE THE EVENING BULLETIN WANT COLUMN

An advertisement is something like a mechanics tool. You would not expect a dull saw to do good work. So a meaningless, unattractive advertisement does injustice to your ability as a business man, narrows your sphere of business, and is unprofitable.

D. T. MALLEY.

KNOWS NOT NAME OF HIS SERVANT

"Dutch" Dave Employs a Man to Cut Lantana at Waimea.

RESEMBLES DESERTER AND THE DEAD MAN

Charles David Calls at Police Station and Tells the Little He Knows—The Harbor Mystery.

The mystery of the dead man found in the harbor on Sunday still remains unfathomed.

"Dutch" Dave, whose right name is Charles David, of Waimea, this island, the man spoken of by Lewis & Turk, the shipping masters, as being the individual for whom they engaged Arthur Bloomfield, the Peter Iredale deserter, to go to work at David's place in the country, called at the police station this morning and informed Deputy Sheriff Chillingworth that he had met a man, following the description of Arthur Bloomfield, in a cigar store on the corner of Fort and Hotel streets three weeks ago and had engaged him to go down to his place at Waimea and cut lantana.

"Dutch" Dave declared that he did not know the man's name, but remembered that his appearance closely resembled the description given of Arthur Bloomfield.

David said that he did not know whether the man was still working on his place or not.

The police are investigating the Iredale deserter theory, propounded by the Bulletin on Monday last. Arthur Bloomfield, for whom Lewis & Turk secured a job with "Dutch" Dave, is being looked for at Waimea and Waialua.

Bloomfield may be found, but in the meanwhile the Iredale deserter theory is still unexplored and is considered to be very probably the correct one.

It was learned this morning, around the Navy wharves, that a man following the description of the man found dead in the harbor near the stern of the transport Warren on Sunday, and also resembling the most authoritative description of Arthur Bloomfield, the Iredale deserter, was frequenting the transport Warren and the Navy collier, Alexander about two weeks ago, looking for work. He wanted to work his way to Manila, but found no opportunity to do so aboard the Warren. He next tried to get a job on the collier, but failed.

Lewis & Turk say that Bloomfield hung around their office for three or four days before he went down to Waimea to work for "Dutch" Dave. Mr. Lewis says he was a man of good habits and retiring disposition, caring but little for drink and being very gentlemanly in his habits.

A waterfront man who was present on Brewer's wharf on Sunday when the body of the man was taken out of the water, said this morning that the right arm seemed to have been broken, as it was in an attitude which seemed to indicate a break. He was impressed with the idea that the dead man was an Englishman and a sailor, and that there had been foul play. He asked if the body had been identified, and when told that the remains had been interred expressed surprise that the body had not been kept for a couple of days for identification, as is done in Mainland cities.

Except for the possibility that the body found in the harbor was that of Arthur Bloomfield, the mystery is no nearer being solved than when the gruesome remains were fished out of the harbor on Sunday by McKean, a native.

Who was the dead man? Was he murdered or was his death the result of a fight or an accident? If murdered, who killed him? If there was a fight, with whom did the unknown

(Continued on page 5.)

look pleasant please!

are words entirely superfluous, when taking children's pictures at our studio because we have every facility for interesting them and understand perfectly how to secure the best and most characteristic baby pictures. . . Come and see our sample display.

Rice & Perkins,

PHOTOGRAPHERS.
Oregon Block, cor. Hotel and Union Sts. Entrance on Union.

Judged Guilty of Contempt of Court And Sentenced for Thirty Days

DECISION OF THREE JUDGES

Attorneys in the courtroom were Geo. A. Davis and C. C. Bittling, respectively for the court and the citation: W. O. Smith, F. M. Lewis and L. Andrews, for the respondent; J. L. Kaukoku, J. T. De Bolt, Geo. Hons, H. A. Bigelow, Frank E. Thompson, C. A. Long, J. M. Vivas, Enoch Johnson, W. L. Wilcox, E. S. Gill, Assistant Attorney General E. A. Douthitt, Lyle A. Dickey, F. M. Brooks, W. W. Thayer, A. F. Judd, T. McCants Stewart, T. L. Dillon, Deputy Attorney General J. W. Cathcart, E. M. Watson, L. A. Thurston (president Hawaiian Gazette Company), W. T. Robinson, Chas. S. Dole, J. Lightfoot, C. F. Chillingworth, E. B. McClanahan, Cecil Brown, J. Andrade, Sittling accommodation and standing space were crowded with spectators, among others noticed being Rev. Hiram Bingham, D. D., Mons. Vitzavona (French Consul), Representative C. H. Dickey, J. F. Brown, Harry L. Evans, Superintendent of Public Works Jaa. H. Boyd, Treasurer W. H. Wright, Prince David Kawananakoa, John F. Colburn, John A. McCandless, C. F. Reynolds, N. W. Griswold, Dr. C. B. Wood, L. H. Dee, W. M. Minton, J. D. Avery, together with grand and trial jurors.

Judge Humphreys, Gear and Robinson entered and took their seats on the bench at 9:15.

Walter G. Smith the respondent had been in appearance from 9 o'clock, the hour to which the return had been extended.

W. O. Smith, when the case was called, advanced and read a motion to discharge the writ in the following terms:

Motion to Discharge.

In the Circuit Court of the First Circuit, Territory of Hawaii, February term, 1902, Territory of Hawaii vs. William G. Smith. Re contempt of W. O. Smith.

Now comes Walter G. Smith, the respondent in the above entitled contempt proceedings, and moves the Court that the rule to show cause why the said respondent should not be punished for contempt herein, be discharged, upon the following grounds:

I. That the act complained of in the motion upon which said rule to show cause is based, is not, in law, a contempt of court for which the Court has power to punish this respondent.

II. That this Court cannot legally punish for contempt a publication of the nature of that herein complained of, made in a newspaper and not done in the immediate presence of the Court.

III. That the publication of a cartoon or picture, such as that complained of, done without knowledge by the person so publishing the same that a case pending before the Court would or might be prejudiced thereby; or without knowledge that any such case was pending, is not a contempt of court and cannot be punished as such.

IV. Under the statutes of the Territory of Hawaii, no publication out of court in relation to the Court or to any of its members amounts to a contempt, and the same cannot be punished as such.

WALTER G. SMITH, Respondent.

Geo. A. Davis, as amicus curia for the Court, said he desired to put on evidence.

Judge Gear said the motion to discharge was in the nature of a demurrer and would have to be disposed of before any evidence was taken.

Judge Gear overruled the motion to discharge the writ.

W. O. Smith next read the return of respondent.

Return and Answer.

Following is the return and answer of respondent, as amended after being read:

Walter G. Smith, the respondent in the above entitled contempt proceedings, for return and answer to the citation and order herein, and to purge the contempt herein alleged, says:

I. That he is the editor of the newspaper called The Pacific Commercial Advertiser, printed and published in Honolulu, in which was printed the cartoon or picture referred to in the motion herein.

II. That at the time said cartoon or picture was published he did not know that the case of the Territory of Hawaii versus William McCarthy, wherein the said McCarthy was charged with assault in the first degree, an alleged in said motion, was begun or was pending before the said Circuit Court or any other Court.

III. That he knew that the said McCarthy had been tried in said Circuit Court upon a charge of mayhem, and had been discharged by the Court some days prior to the publication of said cartoon or picture, but did not know nor had he been informed that another charge on the same state of facts had been entered against said McCarthy and that the trial on said new charge had been begun or was pending.

IV. That said cartoon or picture related solely to said case of the Territory of Hawaii vs. William McCarthy, charged with mayhem, which had been tried and determined, and was not published with intent to prejudice the jury or the public or anyone respecting the merits of any case pending against said McCarthy, or to present or obstruct the administration of justice, or to show contempt of the Honorable George D. Gear, Judge of the Circuit Court, or of said Court.

WALTER G. SMITH, Respondent.

W. O. Smith, on being sworn, said that after a struggle on the street with the bailiff he had been placed on the jury. He caused general merriment, which Bailiff Ellis had to suppress, by refusing to concede that the ear-biter in the picture was the likeness of a man. "The lower part is like a man, but the upper part is like a monkey. He thought he could swear that the figure was not like a man. That looks like Judge Gear; he is blessing something," the witness concluded.

W. O. Smith, on the calling of the sixth or eighth juror, mildly objected to leading questions. Judge Gear sustained the objection, when Mr. Davis changed his mode of examination.

Joe Richards testified: "This picture here represents Judge Gear right enough. I would not say it is McCarthy, but it is a man biting a woman's ear."

Judge Gear—"Do you say it is a good likeness of me?"

Witness—"Yes, sir." (Laughter).

Different jurors said the paper had reached them in the courthouse. There was no cross-examination of the respondent.

Mr. Davis introduced the record of the former trial and the indictment in the present trial of McCarthy.

J. W. Jones, official stenographer, was called to give the record of Judge Gear's remarks in stating the law of the case of mayhem. While he retired to get his notes, the time was improved.

It was here that W. O. Smith asked and was granted leave to amend the return by inserting a disclaimer of disrespect to Judge Gear.

Judge Humphreys here stated his purpose in calling attention to the omission in the return. He had done so because the obvious intention of the cartoon was to throw discredit on the legal opinions of the presiding judge, and influence the jurors to take the bit in their mouths and decide the case then on trial without reference to the law or without reference to the judge.

Mr. Davis asked if he had the right to open the argument.

Judge Gear supposed so, if the respondent had no evidence to offer.

Stenographer Jones, having returned to the stand, could not find that he had reported Judge Gear's ruling, though he had reported the motion.

W. O. Smith—"We have no evidence."

Mr. Davis Argues.

Geo. A. Davis, opening the argument, said this Court was created by Section 81 of the Act of Congress providing a

Government for the Territory of Hawaii. He submitted that by the Organic Act this was a constitutional court, which had an inherent power of punishing for contempt. From 46 Ohio he quoted the cases of *Meyers vs. State*, where it was held the Legislature did not create the State higher courts. Many authorities were cited in the Ohio case as forming an unbroken line of authority establishing the doctrine that the Legislature could not destroy the power of courts of record to protect themselves from insult or interference with their functions.

The Supreme Court of Hawaii in *Ex Parte Davis*—the subject being the speaker himself—held that it was unnecessary to comment on the right of every court to protect itself. Any Circuit Court of this Territory might punish for contempt by not more than two months' imprisonment or a fine of not more than two hundred dollars. More cases were quoted to prove the principle that the power to punish for contempt was inherent in every court of record.

"This was a criminal libel, an actual contempt," declared Mr. Davis coming down to the case at bar. The Sixth Amendment to the Constitution assured a fair and impartial trial to every accused person. "I have no intention to make a spread-eagle speech" (laughter), said Mr. Davis. That miserable picture spoke for itself. He quoted from an Ohio decision, wherein the court held that while the article in question was libelous, that was not the ground of the information, but the article was an attempt to interfere with the administration of justice by the court.

They talk about the liberty of the press, being in peril, but when they strike at the sacred privilege—the liberty of the citizen—they strike at the rights of every man. The attempt to prejudice the jury and the public against this man, McCarthy, was a cowardly attack on his right. Besides, there was an evident intention to produce irritation in the mind of the judge so as to prevent him from giving calm consideration to the case on trial.

Mr. Davis said he had proved that this publication was made in this courthouse. Eleven of the jurors testified they had seen and read it there. Quoting again from the Ohio case he fitted it to the one at bar. The judgments of all inferior courts were subject to review. If Judge Gear had done wrong there was a proper way to place him on trial before the President of the United States. What interest had Judge Gear in liberating prisoners? What was the purpose of the attacking press? These things he could not understand.

Reverting again to his own case, Mr. Davis said that William Owen Smith, the opposite counsel, was the very same man who had striven to have him incarcerated for merely filing a bill of exceptions that was considered a reflection on a judge.

"And you succeeded admirably," he declared to Mr. Smith, causing a general laugh.

Walter G. Smith was the only person they could reach, being the responsible editor of the Advertiser. It was a pity they could not get at the men publishing the wires behind the scenes to conduct this disgraceful campaign against the courts as constituted.

He did not desire to praise Judge Gear, yet would say that he had been doing the best he could, working hard for the moderate salary of \$250 a month. The speaker censured the Attorney General's Department for tacitly consenting to these persistent attacks on the judges appointed by the President. Probably the Advertiser would say tomorrow that he was ranting, but Mr. Thurston, president of this publishing company, who was an able and learned lawyer, knew that he was right.

Mr. Davis was then excused to attend the Federal court, leaving Mr. Bittling to make whatever reply might be necessary to opposite counsel.

Mr. Lewis Replies.

Mr. Lewis, partner of W. O. Smith, replied on behalf of the respondent. His words were well arranged and authorities well marshaled. There is neither time nor space to extend the notes of his address. Its gist was that the Hawaiian law of 1888 was still valid which provides in one section that there is no contempt in publishing substantially fair and accurate reports of court proceedings, and in another that the courts cannot punish for constructive contempts, with a definition that constructive contempt means an act of disrespect committed outside the presence of the court.

Judge Humphreys confessed to having been so much impressed by the endeavor of Mr. Lewis to make his main point that he questioned him thereon after the conclusion of his argument.

Mr. Bittling, in reply to Mr. Lewis, made an impressive argument to show that this was not a constructive but an actual contempt. He characterized in strong terms the publication of the cartoon. As attorney for McCarthy in the

pending trial he contended it was a most flagrant attempt to pervert justice. The cartoon was denounced as blasphemous in representing Judge Gear in the attitude and using the gestures of a minister of God Almighty, blessing a person represented as a criminal fiend.

The Judgment.

Judge Gear ordered a recess of fifteen minutes and retired with his colleagues.

Judge Humphreys, on the return of the Court, delivered the opinion of the court. Apart from the question as between constructive and actual contempt, the three judges were unanimous in finding that the sections of the law of 1888, providing it were still valid, must be construed together. The law was thus seen to refer to publication of court proceedings. It had been passed on account of the finding of a former editor of the Advertiser (the late Robt. J. Creighton) for publishing a complaint in equity after it had been duly filed. The judge read at length from a decision in the Omaha Bee case. Finally, the court's unanimous opinion was declared, viz., that Walter G. Smith was guilty of contempt.

Judge Gear then called the respondent up and asked him if he had anything to say why sentence should not be pronounced.

W. O. Smith briefly answered, repeating substantially the pleas in argument also pleading that the respondent had purged himself of contempt by denying knowledge of the pending of the McCarthy case at time of publication.

Judge Gear quoted law that for written or printed attacks on a court, denial of knowledge did not constitute purgation. He said that the denial, however, had been considered by the Court as extenuation. He then sentenced Walter G. Smith to imprisonment for thirty days "without hard labor" and committed him to the custody of the court bailiff.

HABEAS CORPUS NOW AND POSSIBLY PARDON

Immediately upon the decision of the Court, Editor Smith was taken into the custody of Bailiff Ellis and remained in the court room until the following commitment was issued:

Mittimus.

Whereas, the said Walter G. Smith was duly cited and ordered to appear before the said court to answer to the said charge of contempt which had been duly filed against him, and upon due hearing by the said Circuit Court of the evidence and of counsel in support of the charge and for the said Walter G. Smith, the said Circuit Court found the said Walter G. Smith guilty of a contempt of this court, as charged in the affidavit and motion;

And, whereas, the said Walter G. Smith was guilty of a contempt of this court by publishing and printing a certain false, scandalous, malicious and defamatory statement accompanied by a printer's picture or cartoon, which said statement and cartoon had special reference to the case of the Territory of Hawaii vs. William McCarthy and to the conduct and judicial acts of the judge presiding on the trial of said case, which said false, scandalous, malicious and defamatory statement and printed picture or cartoon was circulated and published in the court room in the court house in Honolulu during the trial of the cause of the Territory of Hawaii vs. William McCarthy, which said publication was calculated to prejudice and did prejudice the minds of the jury and prevent a fair and impartial trial of the issues involved in said case, and is calculated to obstruct and did obstruct the Circuit Court in the administration of justice and in its duties in the trial of said cause which was then and is now pending and undetermined.

Now therefore it is ordered and adjudged by the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, that the said Walter G. Smith, by reason of the said acts, was and is guilty of a contempt of the said Circuit Court, committed on the day charged, to wit, on the 12th day of March, A. D. 1902;

It is further ordered and adjudged that the said Walter G. Smith be punished for said contempt by imprisonment in Oahu prison for the space of thirty days;

And it is further ordered that this judgment be executed by imprisonment of the said Walter G. Smith in Oahu prison in the Island of Oahu, in

the Territory of Hawaii, for the space of thirty days, there to be kept and detained but without hard labor, and the High Sheriff of this Territory and the keeper of said prison are hereby commanded and directed to receive and detain the said Walter G. Smith in your custody and to cause said sentence to be executed.

Hereof fail not.

Witness the Honorable George D. Gear, Second Judge of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, presiding, and the seal of said court at Honolulu, Isl. and of Oahu, this 13th day of March, A. D. 1902. A. G. KAULUKOU, Clerk of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

He was taken in charge by High Sheriff Brown and held while his attorneys perfected the petition for habeas corpus now being asked for in the Supreme Court.

It is understood that, failing a writ of habeas corpus, Smith will ask for and be granted a pardon by Governor Dole.

MUNICIPAL SCHEME FOR PORTO RICANS

Washington, March 4.—The Commission to revise and compile the laws of Porto Rico has submitted its report to the Attorney General. The Commission consisted of Joseph F. Daly of New York, L. S. Rowe of Pennsylvania and Juan Hernandez Lopez of Porto Rico. The work undertaken was the revision and compilation of practically all the old Spanish laws.

The Commission, after an exhaustive study of the Spanish system, proceeded to make the most necessary changes, such as the reorganization of the judicial system and the system of local government, the revision of the laws of marriage and divorce and wills and a number of other important branches of the civil and criminal laws. The most important work of the commission was the revision of the organic act of Porto Rico, commonly known as the Foraker act. The system of local government, as proposed by the Commission, includes a county, city and village organization. Briefly stated, for local self-government, the system leaves to the local authorities the management of local affairs, but prescribes a definite standard of efficiency in the most important services, such as sanitation, drainage, water supply, street cleaning, etc. If the local governments fail to meet these standards the insular government is given sufficient power to meet every emergency. The habeas corpus act is another of the important changes proposed by the Commission.

The subject of marriage and divorce is also fully treated. The Spanish civil code does not recognize divorce, although a separation proceeding is provided for. This branch of the law has been brought into close harmony with the system prevailing in such States as New York and Massachusetts.

At the expiration of the term fixed by Congress for the presentation of this report the Governor of Porto Rico appointed a code commission to continue the work of the first commission. The membership of the second commission was the same as that of the first, with the exception of the substitution of J. W. Keedy of Maryland for Joseph F. Daly, the latter being unable to serve. The second commission, of which Dr. L. S. Rowe is chairman, has utilized the work of the first commission in a general revision of the existing codes.

The District Court was a half-hour late in sitting this morning. Judge Wilcox had business in the upper courts.

Pedolin relieves and cures bunions and soft corns. Dr. W. R. Bogle, Oregon block.

WHAT IS ACTUALLY HINDERING WARREN

Two of Transport's Furnaces Are Out of Order.

SAILING TIME IS NOW SET FOR THE MORNING

Two Crown Sheets Had Fallen Down and Needed Stiffening—More Repairs at San Francisco.

According to a notice posted on the Warren and signed by the quartermaster of the transport, that vessel will leave this port tomorrow morning at 9 o'clock. Quartermaster Cannon of the Warren stated this morning that the only trouble causing the delay was that two furnaces were out of order. These would probably be repaired by tonight. Cannon & Neill were doing the work. When asked whether there was any truth in the report that the Honolulu Iron Works had refused to take the job, the quartermaster said that the boilermaker from the Iron Works had been down to examine the boilers and had refused to repair them. He understood that this man was very independent and a cantankerous fellow. He probably did not fancy the job and consequently the Honolulu Iron Works did not accept.

Cannon & Neill were seen with regard to the matter. They stated that the trouble was that two crown sheets of the boiler had fallen down. Their men were now at work stiffening them with braces and strongbacks, and the job would probably be finished by tonight. While the repairs, which could be made here would only be of a temporary nature, still the transport would be able to go to Manila and back to San Francisco in perfect safety. On her arrival at San Francisco more extensive repairs would be necessary.

The Honolulu Iron Works people reply that they did not refuse to do work on the boilers, as stated in today's Advertiser, but that they were called upon to make an examination of the two corrugated furnaces in question and reported to the transport officials that no repairs could be made to the furnaces that would permit of their being put into service, and did not desire to attempt what they knew would be an impossibility, and further advised that the Warren go to sea without using the two defective furnaces, to which there would be no objection except to slightly reduce the speed of the vessel. In fact, a year and a half ago the Warren made the run from Manila via Honolulu under similar conditions with one furnace disabled.

It is understood from reliable sources that the trouble lies in the crown sheets, which have been overheated and by the expansion of the metal, been pressed down. It is probable that some carelessness in letting down water was the immediate cause of the damage.

The whole matter of repairing the damage is not of as great importance as has been thought, as the damage only puts two furnaces out of commission, while there are some ten others which can be used without danger.

It is also understood that notwithstanding the fact that the crown sheets in question are being repaired, the two furnaces under these plates will not be used during the voyage, the effect of which will be that safety is insured at the sacrifice of some speed.

The final repairing of the damage will have to be done in San Francisco when the transport comes back to that port and even then it will be necessary to send East for new parts of the boiler.

Pedolin relieves and cures bunions and soft corns. Dr. W. R. Bogle, Oregon block.

A NEW HYGIENIC SHOE FOR WOMEN

Have you seen it? A neat Oxford tie made of the softest kid, with elk hide sole and rubber heels; just the thing for house wear or for those who are on their feet a good deal. It is also, properly, a shoe for nurses. . .

- \$2.50 BUYS A PAIR -

If you wish a neat-looking shoe and one that gives solid comfort, try a pair.

S. S. ALAMEDA, MARCH 9I,

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Wells, Fargo & Co., Express

TEL. MAIN 199. Masonic Temple, with American Messenger Service.

Manufacturers Shoe Store

1057 FORT ST.